



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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### IND102855.E

India: Accountability of police including any mechanisms to allow complaints against police  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

This Response addresses accountability of police including any mechanisms of complaint against police only at the national level in India.

Although the states are usually in charge of police services in India, the central government is responsible for protecting every state against "external aggression and internal disturbance" (India n.d.a). The Ministry of Home Affairs oversees two divisions related to police: the Police Division and the Police Modernisation Division (India 5 May 2008). The Police Division "functions as the cadre controlling authority in respect of Indian Police Service (IPS) and also deals with all matters relating to Central Police Forces" (ibid. 2007-2008, Para. 1.21) while the Police Modernisation Division "handles all items of work relating to modernisation of State Police Forces" (ibid., Para. 1.22).

The United States (US) Department of State *Country Reports on Human Rights Practices for 2007* reports that the use of torture in detention facilities by police is common and that "although police were subject to prosecution for such offenses, the government often failed to hold them accountable" (US 11 Mar. 2008, Sec. 1c).

The Commonwealth Human Rights Initiative (CHRI), an international non-governmental organization promoting human rights in Commonwealth countries (CHRI n.d.b), has developed a program (operating in India and other countries) that addresses police reforms with an emphasis on police accountability (ibid. n.d.c). The CHRI indicates that, under existing national police legislation, the executive is in charge of the police, which "leaves the door open for illegitimate political interference in policing" (ibid. n.d.a). The CHRI also indicates that there are no external accountability mechanisms to address police misconduct (ibid.). Some sources note that the Code of Criminal Procedure does not help as it contains provisions stipulating that the government must "sanction" the prosecution of public servants (including police officers) (ibid. 4 Feb. 2006; *The Tribune* 4 Nov. 2007; see also India 25 Jan. 1974, Sec. 132 and 197).

### The National Human Rights Commission

The National Human Rights Commission (NHRC) was established to receive complaints and investigate allegations of human rights violations committed by public servants or as the result of negligence by public servants (India 2007-2008, Para. 5.7; ibid. n.d.b). The NHRC can also perform the following functions (non-exhaustive list): intervene in any court proceeding concerning a human rights violation, visit any detention facility with the state's approval and make recommendations on the conditions, review legislation and international instruments relating to human rights and recommend measures for their effective implementation, conduct human rights research, promote awareness and support the work of human rights organization (ibid.).

When the NHRC finds that a violation of human rights has been committed, it may recommend that the concerned government or authority prosecute the person responsible or implement "such other action as the [NHRC] may deem fit" (ibid.). With regard to violations allegedly committed by the armed forces, the NHRC may seek a report from the central government and, upon receipt of such report, decide either not to proceed with the complaint or to make its recommendations to the government; in the latter case, the government shall advise the NHRC within three months of the action taken on the recommendations (ibid.). Among the major types of complaints that the NHRC deals with are those related to police administration, unlawful detention, custodial violence, illegal arrest, custodial deaths and "other police excesses" (ibid.). In 2007, the NHRC registered 76,444 cases and disposed of 73,618 cases (ibid. 2007-2008, Para. 5.7). However, the CHRI states that the NHRC faces a "huge backlog" because of the high volume of complaints against the police and is thus unable to address all complaints against the police (4 Feb. 2006). Similarly, an article in *The Tribune* states that the NHRC "has over the years proved to be ineffective due to an inadequacy of investigative staff and the statutory limitation of having only recommendatory powers" (4 Nov. 2007).

### Central Bureau of Investigation

The Central Bureau of Investigation (CBI) is "the premier investigating police agency in India" and it investigates "major crimes in the country having interstate and international ramifications" (India n.d.d). The CBI is composed of three investigation divisions (ibid. n.d.e). The Anti Corruption Division, which deals with cases of corruption, investigates

cases against public servants under the control of the Central Government, public servants in Public Sector Undertakings under the control of Central Government and cases against the public servants working under State Govt. entrusted to the CBI by the State Governments and serious departmental irregularities committed by the above mentioned public servants. (ibid. n.d.f)

### **Central Vigilance Commission**

The Central Vigilance Commission (CVC), which was established in February 1964 and received "statutory status" on 25 August 1998, is a central agency responsible for receiving "written complaints for disclosure on any allegation of corruption or misuse of office and [for recommending] appropriate action" (ibid. n.d.g). It has the authority to supervise investigations under the *Prevention of Corruption Act, 1988* (ibid. n.d.h). The CVC also has the following powers and functions:

to undertake an inquiry or cause an inquiry or investigation to be made into any transaction in which a public servant working in any organisation, to which the executive control of the Government of India extends, is suspected or alleged to have acted for an improper purpose or in a corrupt manner;

to tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving vigilance angle at different stages i.e. investigation, inquiry, appeal, review, etc.;

to exercise a general check and supervision over vigilance and anti-corruption work in Ministries or Departments of the Govt. of India and other organisations to which the executive power of the Union extends. (ibid.)

### **Statistics**

In its annual report for 2007-2008, the Ministry of Home Affairs states that between January 1994 and December 2007, a total of 1,158 complaints were made against the personnel of the "Army and Central Para Military Forces" [Central Police Force]; out of these, 1,118 were investigated, 1,085 were found to be false and 33 were found to be genuine (India 2007-2008, Para. 2.13).

The National Crime Records Bureau (NCRB) collects crime-related statistics and publishes yearly reports (India n.d.c). The NCRB provides the following figures regarding complaints against police personnel in its report for the year 2006: a total of 62,822 complaints were received, with 16,228 (or 25.8 percent) of them deemed "suitable" for investigation while 34,657 complaints (or 55.2 percent) were declared false or unsubstantiated (ibid. 19 Nov. 2007, Ch. 16). The NCRB also adds the following information regarding disciplinary actions taken against police personnel:

The magnitude of Departmental action taken by the States/[Union Territories] UTs against the erring Police Personnel indicates the tight disciplinary control being exercised by the concerned authorities. Disciplinary actions were initiated against 21,810 Police Personnel in 15,510 cases, which attracted departmental inquiry. ... Minor punishments were given to 10,423 police personnel and major punishments were awarded to 6,783 police personnel during this period. (ibid.)

Although the NCRB does not define the distinction between major and minor punishments, an explanation is provided in a detailed report on police accountability published in *Human Rights Solidarity*, a publication of the Asian Human Rights Commission and Asian Legal Resource Centre, in which the author explains the following internal accountability mechanisms with regard to the police in India:

The internal mechanisms for holding individual police officers accountable for their actions are contained in the Police Act of 1861, the state governments' police acts and in rules laid down in state police manuals. The Police Act of 1861 authorises senior police officers of the rank of superintendent of police and above to dismiss, suspend or reduce in rank any police officer below the rank of inspector of police who they think is remiss or negligent in the discharge of his duties or is unfit. They are also authorised to impose one or more of the other punishments: a fine not exceeding one month's pay, confinement to quarters not exceeding 15 days, deprivation of good conduct pay and removal from any office of distinction or special emolument.

In addition, the Police Act of 1861 lists the following offences for which a police officer can be disciplined: a willful breach or neglect of any rule or regulation or lawful order, withdrawal from duties of the office or being absent without permission or reasonable cause, engaging without authority in any employment other than their police duty, cowardice and causing any unwarrantable violence to any person in their custody. The penalty for these offences ranges between a fine of up to three months' pay to imprisonment up to three months or a combination of both.

The rules divide punishments into major and minor. Though the rules differ from state to state, generally, dismissal, removal, a reduction in rank or pay and forfeiture of service are regarded as major punishments. They cannot be imposed on any police officer without conducting a regular departmental inquiry. It is only after the inquiry proves the charges against the accused police officer that a major penalty can be imposed. Minor punishments include censure and reprimand and can be imposed without conducting any departmental disciplinary proceedings.

Giving major punishments to guilty police personnel though is difficult and takes time because the procedure of conducting a departmental inquiry is highly elaborate, cumbersome and time-consuming. Even if the charges are proved, the delinquent police officer can, and generally does, go to court to try and overturn the findings and the punishment imposed.

Unfortunately, the authority of police leadership in India has been eroded over time by political interference, leading to a loss of discipline in the force and the promotion of a tendency at different levels within the police to seek outside patronage for rewards and protection against punishment. This development is one of the major reasons for decline in the effectiveness of departmental mechanisms to ensure police accountability. (5 Sept. 2005, "Internal Accountability Mechanisms")

In addition, the CHRI makes the following comments regarding departmental disciplinary proceedings:

A victim of police misconduct, if lucky, has to be satisfied with departmental disciplinary proceeding against the perpetrator. These opaque proceedings conducted by senior police officers require the complainant to be pitted against the police officer, who usually has better skills and greater experience in law and procedure, and very often a stronger personality. The efforts needed to produce witnesses and the ability required to examine them are also often beyond the resources of the complainant. On the conclusion of the formal proceedings, the enquiry officer submits a report to the disciplinary authority, which finally decides whether the evidence is sufficient to warrant a punishment. Once again, the disciplinary authority exercises discretionary powers in deciding whether to punish or not and also the quantum of punishment. At the stage of decision-making, the suspect gets the benefit of a second stage of defence against the penalty proposed while the complainant has no such opportunity. Avenues of acquittal are still open to the suspect whereas the complainant gets no opportunity to seek enhanced punishment. The cumulative result of these adverse circumstances is that the suspect gets away with an acquittal or a light punishment even after having been found guilty by the internal inquiry and the complainant has no recourse to appeal against this. Additionally, threats to the complaint / witness and the subculture of police brotherhood make the situation pretty dismal for the complainants who allege widespread bias in favour of the police personnel in these proceedings.

Undoubtedly, internal management mechanisms - if well implemented - can be a powerful way of holding police organisations to account. But on their own, they are not enough, and even the best-managed systems never command the full confidence of the public. (CHRI 4 Feb. 2006)

In another report on police accountability in India, the CHRI states that internal departmental inquiries with regards to police excesses inspire a low level of public confidence because of the following factors: a tendency within the police force to protect its image, some "questionable practices" that are widely accepted within the department, a concern that forces will be demoralised in the event of strict action and the probability that the officer being investigated will personally know the inquiring officer (ibid. Feb. - Mar. 2006). In an article on "encounter killings" by the police (i.e., killings that the police justify by saying they occurred during confrontations), *The Tribune* reports that police are often rewarded for such killings through medals, promotions and monetary benefits and that there is a "lack of effective internal mechanisms to probe police decision-making leading to encounters and [a] virtual absence of credible independent complaint mechanisms to investigate encounters" (4 Nov. 2007).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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**Internet sites, including:** Amnesty International (AI), Anti Corruption Bureau Maharashtra, Asian Centre for Human Rights (ACHR), Asian Human Rights Commission (AHRC), European Country of Origin Information Network (ecoi.net), Freedom House, Human Rights Watch (HRW), Integrated Regional Information Networks (IRIN), International Crisis Group, International Police Executive Symposium, United Kingdom Home Office.

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